

EXHIBIT C

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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 WAYMO LLC,
19 Plaintiff,
20 v.
21 UBER TECHNOLOGIES, INC.,
22 OTTOMOTTO LLC; OTTO TRUCKING LLC,
23 Defendants.

Case No. 3:17-cv-00939-WHA

**DEFENDANTS UBER
TECHNOLOGIES, INC. AND
OTTOMOTTO LLC'S OBJECTIONS
TO WAYMO'S PROPOSED
PROTOCOLS PURSUANT TO
PARAGRAPH 7 OF THE COURT'S
ORDER (DKT. 427)**

1 The lengthy and onerous protocol submitted by Waymo assumes that Uber has been found
2 liable by a jury and that a final judgment has been entered against it. Even then, the conditions
3 would be unreasonable.

4 To prepare an appropriately reasonable protocol, some clarification is required in Judge
5 Alsup's ruling. We will divide this submission into three parts: (1) Uber's requests for
6 clarification, (2) Uber's objections to Waymo's proposal, and (3) Uber's proposed protocol.

7 **I. UBER'S REQUESTS FOR CLARIFICATION**

8 Counsel for Waymo has said during conferences with Uber and the Special Master that
9 they read the Court's order to require Uber to provide notice to all customers, all of its agents, and
10 all of its suppliers, without regard to whether they have any nexus to LiDAR. For example,
11 Waymo has taken the position that Uber must provide notice to all Uber drivers, and to every
12 Uber passenger. Uber's view is that the only reasonable interpretation is that these various terms,
13 such as "customers," "suppliers" and "agents" be interpreted to mean entities that are related to
14 LiDAR. In other words, Judge Alsup could not possibly have intended to Uber give notice to
15 every passenger or Uber driver, or to the suppliers who deliver food and paper towels to Uber.

16 With respect to Paragraph 4 of the Scope of Relief (Order at 24), we are concerned that as
17 written, the Order appears to require Uber to identify information that is protected by the attorney
18 client or joint interest privilege. We will make a good faith effort to comply but cannot guarantee
19 that these privileges will be waived. As required by the Court's May 15, 2017 Order, we will
20 advise the Court regarding what privileges (if any) are being waived and proceed accordingly.

21 **II. UBER'S OBJECTIONS TO WAYMO'S PROPOSAL**

22 1. We do not need Waymo's assistance in preparing the letters required by the Court.
23 The letters required by the Order have been prepared and disseminated by Uber. Copies of those
24 letters will be provided to the Special Master.

25 2. The protocol does not need to, and should not, include provisions for disciplining or
26 terminating Uber employees. That would not be appropriate.

27 3. Certifications are not necessary. Uber employees have been told not to speak with
28 Anthony Levandowski about LiDAR, and have been advised of a procedure for reporting any

1 violations.

2 4. With respect to Mr. Levandowski, the Order states that the requested actions must be
3 completed by May 30 at noon. There is no reason to impose additional burden with earlier
4 deadlines as Waymo has suggested. (Waymo Protocol at 4.)

5 5. The provision that Mr. Levandowski be “searched” every time he enters the building
6 (Waymo Protocol at 6) is unreasonable and oppressive. We agree that he will no longer be
7 allowed to use his personal devices at Uber and we have instructed him as such in the letter he
8 received today. Similarly, it would not be reasonable to “confiscate” a personal cell phone. He
9 needs a personal cell phone to communicate with his legal counsel.

10 6. We cannot “disable” Mr. Levandowski’s authorization to access any servers with
11 LiDAR data. That would effectively bar him from working at Uber. We are investigating
12 whether there are any LiDAR-only servers and if there are, would agree to bar him from
13 accessing such servers.

14 7. It is not necessary to interview 35 employees, 15 customers, or 10 suppliers (Waymo
15 Protocol at 6-7), especially when there has been no finding of liability and when there is no
16 evidence that any allegedly misappropriated files are at Uber. We agree to a far more modest
17 “audit” procedure whereby the Special Master can randomly select two employees who work in
18 autonomous vehicles to ask them about Uber’s compliance with this provision of the Order.

19 8. The request to provide the Special Master with access to all “means of
20 communication” of “any LiDAR personnel” (Waymo Protocol at 8) would violate the privacy
21 rights of those employees.

22 9. Asking that the Special Master receive all calendar invitations for any meeting or
23 conference regarding LiDAR (Waymo Protocol at 8) is burdensome and unnecessary.

24 10. Uber requests 96 hours’ notice (as opposed to Waymo’s proposed 48) of a request for
25 inspection. (Waymo Protocol at 10.) We have no objection to the Special Master attending.

26 11. No protocol is needed to keep “complete and accurate” records of Uber’s compliance
27 with the Court’s Order. In particular, no “litigation holds” are necessary beyond those required
28 by law. (Waymo Protocol at 10.) Uber will comply with the Order.

III. UBER'S PROPOSED PROTOCOL

A. “Defendants must immediately and in writing exercise the full extent of their corporate, employment, contractual, and other authority to (a) prevent Anthony Levandowski and all other officers, directors, employees, and agents of defendants from consulting, copying, or otherwise using the downloaded materials; and (b) cause them to return the downloaded materials and all copies, excerpts, and summaries thereof to Waymo (or the Court) by MAY 31 AT NOON.” (Dkt. 427 at page 23, paragraph 2)

On May 16, 2016, Uber sent the following letters:

A letter to Mr. Levandowski explaining the Order's directives and threatening employment sanctions (including possibly termination) if he does not comply (This letter was accompanied by a redacted copy of the Order); and

a letter informing all of Uber's “officers, directors, employees” that they must not consult, copy or use any materials allegedly downloaded by Mr. Levandowski, and asking them to return any downloaded materials they may have.

The letter to Mr. Levandowski was transmitted by email. The letter to the Board was posted to the Board portal. Copies of the letters will be sent to the Special Master.

New employees working in self-driving vehicle technology who join after the date that Waymo posts the required bond shall also receive the letter

B. Implementing the Court's requirement that “With respect to Anthony Levandowski, defendants shall immediately (a) remove him from any role or responsibility pertaining to LiDAR; (b) take all steps in their power to prevent him from having any communication on the subject of LiDAR with any officer, director, employee, agent, supplier, consultant, or customer of defendants; and (c) prohibit him from consulting, copying, or otherwise using the downloaded materials in any way. Defendants shall instruct all their officers, directors, employees, agents, suppliers, consultants, and customers in writing of this prohibition, and further instruct them in writing to immediately report any suspected breaches thereof to the Special Master (or to the Court).” (Dkt. 427 at pages 23-24, paragraph 3)

Uber already has removed Anthony Levandowski from any role or responsibility pertaining to LiDAR.

Uber has sent a letter informing all Uber “officers, directors, employees” of Mr. Levandowski's recusal from any role involving LiDAR; informing them that they should not speak to Mr. Levandowski about LiDAR; and instructing them to report immediately any breaches to the Special Master or the court.

1 As discussed above, Uber will seek clarification from the Court regarding the
2 meaning of “agent, supplier, consultant, or customer.” Pending clarification, Uber
3 will send letters to its LiDAR suppliers. It does not have LiDAR agents or
4 customers.

5 Mr. Levandowski is prohibited from using personal devices on any of Uber’s
6 networks, servers, infrastructure, or systems. As noted above, we are looking into
7 whether there are any LiDAR-only servers that he can be blocked from accessing.

8 Uber employees have been provided with the email address and telephone number
9 of the Special Master. If the Special Master receives a complaint of a potential
10 violation of the Court’s order, he will be allowed to speak to that employee and, if
11 he deems it necessary, to also speak with anyone else who may have witnessed the
12 alleged violation. If the Special Master believes the complaint may have merit, he
13 will inform the parties and allow the parties an opportunity to respond to the
14 allegation. Once he receives the parties’ responses, he will determine whether the
15 complaint should be reported to Judge Alsup.

16 To confirm that Mr. Levandowski is not engaged in any LiDAR work and that
17 Uber is in compliance with that portion of the Order, the Special Master may, on a
18 monthly basis, request to interview two randomly selected Uber employees who
19 work on autonomous vehicles to confirm they have had no discussions about
20 LiDAR with Mr. Levandowski, and that they have not heard of any such
21 discussions.

1 **C. that “With respect to all other persons, including those with Stroz**
 2 **Friedberg, defendants shall conduct a thorough investigation and**
 3 **provide a detailed accounting under oath setting forth every person**
 4 **who has seen or heard any part of any downloaded materials, what**
 5 **they saw or heard, when they saw or heard it, and for what purpose.**
 6 **In their investigation, defendants must do more than query servers**
 7 **with term searches. For example, they must interview personnel with**
 8 **particular focus on anyone who has communicated with Anthony**
 9 **Levandowski on the subject of LiDAR. Defendants’ accounting shall**
 10 **not be limited to Uber but shall include all persons who fit the**
 11 **foregoing description, including Levandowski and his separate**
 12 **counsel. The accounting may exclude, for only the time period after**
 13 **the commencement of this civil action, the attorneys of record and**
 14 **their staff and experts employed for this litigation. The accounting**
 15 **shall not be limited to downloaded materials that happened to make**
 16 **their way into some due diligence report but shall cover any and all**
 17 **downloaded materials. The accounting shall also identify the complete**
 18 **chains of custodians for every copy of any downloaded materials or**
 19 **due diligence report referencing downloaded materials. Defendants**
 20 **must also use the full extent of their authority and influence to obtain**
 21 **cooperation with the foregoing procedure from all involved. For**
 22 **example, if a potential custodian refuses to cooperate, then defendants’**
 23 **accounting shall set forth the particulars, including all efforts made to**
 24 **obtain cooperation. The accounting must be filed and served by JUNE**
 25 **23 AT NOON.”**

14 No protocol is necessary. Uber will comply with this paragraph. Two
 15 issues that will have to be addressed are (1) Levandowski’s counsel may
 16 assert attorney-client privilege; and (2) the Stroz material is subject to a
 17 joint interest privilege. As required by the Court’s May 15, 2017, Order,
 18 we will advise the Court regarding what privileges (if any) are being
 19 waived and proceed accordingly.

18 **D. “Also by JUNE 23 AT NOON, defendants shall provide Waymo’s**
 19 **counsel and the Court with a complete and chronologically organized**
 20 **log of all oral and written communications — including, without**
 21 **limitation, conferences, meetings, phone calls, one-on-one**
 22 **conversations, texts, emails, letters, memos, and voicemails — wherein**
 23 **Anthony Levandowski mentioned LiDAR to any officer, director,**
 24 **employee, agent, supplier, or consultant of defendants. The log shall**
 25 **identify for each such communication the time, place (if applicable),**
 26 **mode, all persons involved, and subjects discussed, as well as any and**
 27 **all notes or records referencing the communication.”**

24 Again, no protocol is necessary. Uber will comply with this paragraph.

1 **E. “Subject to the protective order, and upon reasonable notice,**
 2 **Waymo’s counsel and one expert may inspect any and all aspects of**
 3 **defendants’ ongoing work involving LiDAR — including, without**
 4 **limitation, schematics, work orders, source code, notes, and emails —**
 5 **whether or not said work resulted in any prototype or device.” (Dkt.**
 6 **427 at page 25, paragraph 6)**

7 As noted above, on four days’ notice, Uber will make its LiDAR work
 8 available for inspection by one Waymo lawyer and one expert. The request
 9 has to be specific regarding what is to be inspected so that Uber has a fair
 10 opportunity to prepare for the inspection. A lawyer for Uber shall attend
 11 the inspection. The Special Master is welcome to attend.

12 Dated: May 16, 2017

MORRISON & FOERSTER LLP

13 By: /s/ Arturo J. González
 14 ARTURO J. GONZÁLEZ

15 Attorneys for Defendants
 16 UBER TECHNOLOGIES, INC.
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